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REMARKS

STATUS OF THE CLAIMS

Claims 2-4, 10-12, and 25 are currently pending. Claims 2, 3, and 4 have been amended. Claims 26-42 have been added. Claim 25 has been canceled. Following entry of this Amendment, claims 2-4, 10-12, and 26-42 will be pending. Applicants reserve their right to later pursue the subject matter of the cancelled claims and the claims prior to their amendment in this response in continuing applications.

I. REJECTION UNDER 35 U.S.C. § 102(e)

The Examiner has rejected claims 2-4, 10-12, and 25 under 35 U.S.C. § 102(e) as allegedly being anticipated by Lerman et al (US Patent No. 6,441,156).

Applicants respectfully maintain that claims are not anticipated by Lerman et al.

Claim 2

In particular, the Examiner has alleged that claim 2 is anticipated by SEQ ID NO:2 of Lerman et al. and references Sequence Comparison A of the Office Action. Sequence Comparison A is an alignment of SEQ ID NO:20 of the present application and SEQ ID NO:2 of Lerman et al. Claim 2, as amended, recites the closed claim phrase "consisting of" with regard to the claimed nucleic acid encoding a secreted soluble calcium channel subunit polypeptide and recites in part that the polynucleotide sequence encodes "- from amino-acid 1 to between amino-acids 1027 and 1062 of SEQ ID NO:20." SEQ ID NO:2 of Lerman et al., however, is a polypeptide of 1145 amino acids (see col. 65-72). Thus the nucleic acids of claim 2 encode amino acid sequences that are shorter than the nucleic acid than the 1145 amino acid sequence of SEQ ID NO:2 of Lerman et al. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 2. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 2.

Claim 3

Similarly, the Examiner rejected claim 3 as being allegedly anticipated by SEQ ID NO:2 of Lerman et al. and again referenced Sequence Comparison A of the Office Action. Sequence Comparison A is an alignment of SEQ ID NO:20 of the present application and SEQ ID NO:2 of Lerman et al. Claim 3, as amended, recites in part that

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the claimed nucleic acids encode “-a polypeptide consisting of from amino-acid 1 to between amino-acids 1047 and 1062 of SEQ ID NO:20.” Thus, claim 3, as amended, uses the closed claim phrase “consisting of” with regard to the polypeptide sequences that are encoded by the claimed nucleic acids. SEQ ID NO:2 of Lerman et al., however, is a nucleic acid that encodes 1145 amino acids (see col. 65-72). Thus the nucleic acids of claim 3 encode amino acid sequences that are shorter than the 1145 amino acid sequence of SEQ ID NO:2 of Lerman et al. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 2. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 3.

Claim 4

The Examiner also alleged that claim 4 is anticipated by SEQ ID NO:1 of Lerman et al. and references Sequence Comparisons B and C of the Office Action. Sequence Comparison B is an alignment of SEQ ID NO:1 of the present application and SEQ ID NO:1 of Lerman et al. Sequence Comparison C is an alignment of SEQ ID NO:3 of the present application and SEQ ID NO:1 of Lerman et al. Claim 4, as amended, recites the closed claim phrase “consists of” with regard to the claimed nucleotide sequences encoding a secreted soluble calcium channel subunit polypeptide and sets out a Markush group of SEQ ID NOS. that includes SEQ ID NO:1 and SEQ ID NO:3. SEQ ID NO:1 and SEQ ID NO:3, however, encode polypeptides of 1062 and 1109 amino acids in length, respectively. SEQ ID NO:1 of Lerman et al. et al., however, is a nucleic acid that encodes a polypeptide of 1145 amino acids in length (see e.g., col. 57-66 of Lerman et al.). Thus, SEQ ID NO:1 of Lerman et al. encodes a polypeptide that is longer than the polypeptide encoded by SEQ ID NO:1 or SEQ ID NO:3 of the present application. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 4. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 4.

Claims 10-12

Claims 10-12 incorporate all of the limitations of claim 2. Claim 2 is novel over Lerman et al. Accordingly, claims 10-12 are patentable over Lerman et al. Therefore,

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Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claims 10-12.

Claim 25

The Examiner rejected claim 25 as allegedly being anticipated by Lerman et al. under 35 U.S.C. § 102(e).

Applicants have canceled claim 25. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 25.

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CONCLUSION

In view of the foregoing, Applicants believes all claims now pending in this Application are in condition for allowance. If the Examiner believes that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at 734-622-2095.

Dated: December 17, 2003

Respectfully submitted,



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